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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,927	09/28/2005	Frank Sansevero	60469-234; 5276	3758
64779	7590	09/23/2011	EXAMINER	
CARLSON GASKEY & OLDS			BURGESS, RAMYA PRAKASAM	
INTELLECTUAL PROPERTY DEPARTMENT			ART UNIT	PAPER NUMBER
400 W MAPLE STE 350			3651	
BIRMINGHAM, MI 48009			MAIL DATE	
			09/23/2011	
			DELIVERY MODE	
			PAPER	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANK SANSEVERO, CARLA MAJUNTKE, RALPH
STRIPLING, SCOTT ASHWORTH, BERNWARD ENGELKE,
QINGDONG RICHARD JIANG, and RUOMING ROY TIAN

Appeal 2010-001563
Application 10/550,927
Technology Center 3600

Before PHILLIP J. KAUFMAN, EDWARD A. BROWN, and
MICHAEL L. HOELTER, *Administrative Patent Judges*.

BROWN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Frank Sansevero et al. (Appellants) appeal under 35 U.S.C. § 134(a) from a rejection of claims 1-3, 8-16, and 20-30. (App. Br. 1). Claims 4-7 and 17-19 are not on appeal. (*Id.*) We have jurisdiction over this appeal under 35 U.S.C. § 6(b). We AFFIRM-IN-PART.

THE INVENTION

The claimed invention is directed to a device for use with a passenger conveyor, and to a passenger conveyor. Independent claim 1, reproduced below, is representative of the appealed claims:

1. A device for use with a passenger conveyor, comprising:
a display that provides a visible indication of a direction of movement of the conveyor and a variable, visible indication of maintenance information regarding the conveyor.

THE REJECTIONS

The following Examiner's rejections are before us for review:

1. Claims 1, 2, 8, 10, 11, 13-15, 20, and 29 are rejected under 35 U.S.C. § 102(b) over Mehlert (US 5,782,330; issued Jul. 21, 1998.)
2. Claims 3, 12, 16, and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mehlert in view of Williams (US 2003/0000798 A1; pub. Jan. 2, 2003.)
3. Claims 9, 21, 23-27, and 30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mehlert in view of Zaharia (US 5,708,416; issued Jan. 13, 1998.)

4. Claim 28 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mehlert in view of Saito (US 4,798,274; issued Jan. 17, 1989.)

ISSUES

The following issues have been raised in this appeal:

1. Are the visible indications recited in claim 1 directed to non-functional printed matter?
2. Even if the visible indications recited in claim 1 are not directed to non-functional printed matter, does Mehlert disclose them?
3. Did the Examiner err in concluding that the combination of Mehlert and Zaharia would have rendered obvious a device for use with a passenger conveyor including "a transmitter remote from the display and wherein the transmitter provides a wirelessly communicated signal that controls the display," as recited in claim 9?
4. Did the Examiner err in concluding that the combination of Mehlert and Saito would have rendered obvious a device for use with a passenger conveyor in which "the display is supported on the [passenger conveyor] structure," as recited in claim 28?

ANALYSIS

Claims 1, 2, 8, 10, 11, 13-15, 20, and 29

As to claim 1, the Examiner found that Mehlert discloses "[a] display that provides a visible indication of a direction of movement of the conveyor ... and a variable, visible indication of maintenance information regarding

the conveyor." (Ans. 3.) Appellants acknowledge that the traffic light 36 in Mehlert may provide an indication of a direction of conveyor movement, but disagree that Mehlert's display 44 provides a visible indication of maintenance information. (App. Br. 4-5.) We do not find this contention persuasive.

Firstly, claim 1 does not recite any structural limitations for the "display" that distinguish it from Mehlert's display structure. Rather, Appellants' essential contention is that Mehlert's display does not provide the *same content* as that recited in the claim. However, the specific content of the display, that is, "printed matter," will not distinguish the display from the prior art in terms of patentability where the printed matter is not functionally related to the substrate. *See In re Gulack*, 703 F.2d 1381, 1385-86 (Fed. Cir. 1983) ("[T]he critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate."). There is no new functional relationship between the claimed content of the display (i.e., visible indications) and the display itself (i.e., substrate). The particular information shown by the display does not change its structure or function. Hence, we construe the claimed visible indications as non-functional printed matter. As such, the recited contents of the display alone do not patentably distinguish the claimed display from Mehlert's display.

Moreover, even were the particular visible indications recited in claim 1 to be given patentable weight, Mehlert discloses them. In this regard, Mehlert discloses:

The traffic light 36 includes a display 44 having markings to indicate the operational status of the

escalator 12. For instance, the traffic light 36 may include a red colored horizontal line and a green arrow. The horizontal line is used to indicate that the escalator 12 is operating in a direction opposite to the passengers approaching the face of the traffic light 36, or that the escalator 12 has been stopped. The green arrow is used to indicate that the escalator 12 is operating and the direction of operation of the escalator 12. It should be noted that the traffic light is essentially a means to display information. It may be made larger than shown in FIGS. 1-4 in order to display further information regarding the escalator, or other information of interest to passengers. In addition, other types of traffic lights may be incorporated into the housing. One example is shown in FIG. 6. In this embodiment, the housing includes sequentially flashing lights 45 that extend along the side of the housing. The direction of the sequence indicates the direction of travel of the escalator.

(Mehlert, col. 3, ll. 46-67, emphasis added; *see also* Fig. 4.)

Regarding the claimed "variable, visible indication of maintenance information regarding the conveyor," the Examiner found that the markings of the display 44 of the traffic light 36 in Mehlert indicate the "operational status" of the conveyor; that is, whether it is currently running or stopped, which provides this visible indication. (Ans. 3, citing Mehlert, col. 3, ll. 46-67; Ans. 5.) Appellants contend that Mehlert's single traffic light 36 does not provide two "different" visible indications. (App. Br. 5.) However, claim 1 does not expressly recite that the visible indication of a direction of movement of the conveyor is "different" from the visible indication of maintenance information. Moreover, Mehlert discloses that the traffic light may include a red colored horizontal line to indicate that the escalator has stopped, and a green arrow to indicate that the escalator is operating, and in

which direction. (*See also* Fig. 6.) The red line and green arrow do provide two different visible indications on the display, by having different colors and providing different information about the escalator, from each other. In addition, Mehlert discloses that the display can also include flashing lights 45, which would provide yet another "visible indication."

Appellants also contend the Examiner's position that Mehlert's traffic light 36 provides "maintenance information" is unreasonable. (App. Br. 5-6; Reply Br. 1-2.) Appellants contend that maintenance information is something other than whether a conveyor is moving in a particular direction or not at all, but provides information to a mechanic or maintenance technician. (App. Br. 6.) Appellants contend that the Specification describes examples of "maintenance information," and the Examiner did not take these examples into account. (App. Br. 6-7.) Appellants' contentions are not persuasive.

Claim 1 recites no limitations that require giving the term "maintenance information" any specific meaning that would distinguish it from the information provided by Mehlert's display discussed *supra*. Nor do Appellants refer us to a definition of the term "maintenance information" in the Specification, or to any other description therein, that limits this term so as to preclude a broad definition. *See In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (An applicant is permitted to define specific terms used to describe the invention by setting forth a definition for terms with reasonable clarity, deliberateness and precision.); and *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004) (If claim language carrying a narrow meaning is absent, we limit the claim based on the specification only if there is an express

disclaimer of the broader definition therein.). Rather, Appellants merely refer us to a description of "*example* maintenance information" in the Specification. (Spec. p. 4, ll. 17-20, emphasis added.) We decline to import limitations of any particular embodiment into the claim. *See Superguide Corp. v. DirecTV Enter., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) ("[A] particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.").

Appellants also contend that "a red traffic light when a conveyor is stopped" disclosed in Mehlert is not "variable" maintenance information as claimed. (App. Br. 7.) However, this visible indication is "variable," as it will change based on the operational status of the conveyor. (Ans. 6.) Hence, we sustain the anticipation rejection of claim 1, as well as claim 11, which depends from claim 1 and is not separately argued.

Appellants' contentions with respect to claims 2 and 10, which depend from claim 1, are based on the argument that Mehlert does not provide two distinct visible indications. (Reply Br. 3.) However, as discussed *supra* with respect to claim 1, Mehlert does provide two visible indications. In addition, Appellants do not adequately explain why Mehlert does not meet the limitations of claims 2 and 10.

Appellants correctly point out that claim 8 depends from claim 3, which is not included in this ground of rejection. (App. Br. 7.) We reverse the rejection of claim 8.

Appellants do not argue specific limitations of independent claim 13 separately. (App. Br. 7.) Hence, we sustain the anticipation rejection of claim 13, as well as claims 15 and 20 which depend from claim 13, and are

not separately argued. Appellants' contentions with respect to claim 14, which depends from claim 13, are not persuasive for similar reasons as those discussed *supra* for claims 2 and 10. (Reply Br. 3.)

As to claim 29, which depends from claim 1, Appellants contend that Mehlert does not disclose "distinct and separate indications." (App. Br. 7; *see also* Reply Br. 3.) However, Mehlert's display provides an indication of the escalator's direction of movement that is separate from, and has a distinct appearance from, the indication of maintenance information. Hence, we also sustain the anticipation rejection of claim 29.

Claims 3, 12, 16, and 22

The Examiner found that Mehlert discloses all of the claim limitations except for a second panel that "provides at least some of the maintenance information." (Ans. 4.) The Examiner found Williams discloses an escalator control unit 12 installed with a monitor display 246 for displaying indicators of faults, and concluded that it would have been obvious to modify Mehlert to include a monitor display on the second control panel for displaying indicators of faults. (Ans. 4, citing Williams, para. 0056.)

In the Appeal Brief, Appellants argue claims 3, 12, 16, and 22 as a group, contending that there would be no benefit to adding the information discussed in Williams to Mehlert's display. (App. Br. 8.) In the Reply Brief, Appellants state what claims 3 and 16 recite, without explaining why the claimed subject matter is patentably distinguishable over the applied combination of references, and also contend that the specific maintenance information recited in claims 12 and 22 patentably distinguishes the claimed

device from Mehlert's device. (Reply Br. 2-3.) Appellants' contentions are not persuasive.

Firstly, the specific information (printed matter) displayed on the claimed second display panel does not patentably distinguish it from Mehlert's *device* because it is not functionally related to the second panel display. Moreover, Mehlert describes that "the traffic light is *essentially a means to display information*. It may be made larger than shown in FIGS. 1-4 in order to display further information regarding the escalator, or other information of interest to passengers." (Mehlert, col. 3, ll. 57-61, emphasis added.) Mehlert does not explicitly limit the content of the "further information regarding the escalator," nor have Appellants identified any disclosure in Mehlert that the information described by Williams would not be of interest. Hence, we sustain the Examiner's obviousness rejection of claims 3, 12, 16, and 22.

Claims 9, 21, 23-27, and 30

Appellants argue the rejection of claims 9, 21, and 23-27 as a group. (App. Br. 9.) We select claim 9 as the representative claim from the group, and, as such, claims 21 and 23-27 stand or fall with claim 9. *See* 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner found that Mehlert meets all of the claim limitations except for use of a wireless transmitter. (Ans. 4.) The Examiner found Zaharia discloses using a wireless transmitter to remotely control an escalator and its components, and concluded that it would have been obvious to modify Mehlert by utilizing a wireless transmitter to remotely control the

display panel. (Ans. 4-5, citing Zaharia, col. 3, ll. 30-46.) Appellants contend that Zaharia's disclosed transmitter provides information to an escalator controller to take action responsive to activation of a safety device, not to control a display. (App. Br. 9.) This contention is not persuasive.

Claim 9 does not specify that the transmitter achieves any particular "control" of the display. The Examiner found that Zaharia discloses that the encoder-transmitter 30 provides a wireless signal that can control the escalator 10. Zaharia's wireless control signal is a familiar item that has other uses beyond the primary purpose of controlling the escalator. A person of ordinary skill would recognize that a signal produced by Zaharia's encoder-transmitter 30 could also be used to control devices associated with an escalator, such as a display that provides information pertaining to operation of the escalator, to allow remote control of the display. *See KSR Intl. Co. v. Teleflex, Inc.*, 550 U.S. 398, 420 (2007) ("Common sense teaches, however, that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle."). Furthermore, Zaharia does disclose providing a wireless signal to a receiver unit 70 to cause it to display condition information for the escalator. (Zaharia, col. 4, ll. 41-49; Fig. 4.) Hence, it would have been obvious to modify Mehlert in view of Zaharia by utilizing a wireless transmitter to remotely control the display panel.

As to claim 30, which depends from claim 13, Appellants contend that Mehlert fails to disclose separate and distinct visible indicators, as claimed. (App. Br. 9-10; *see also* Reply Br. 3.) For reasons discussed *supra* with

respect to claim 29, this contention is not persuasive. Hence, we also sustain the obviousness rejection of claims 9, 21, 23-27, and 30.

Claim 28

The Examiner found that Mehlert discloses all of the claim limitations, except for a display that is supported on the passenger conveyor structure. (Ans. 5.) The Examiner found that Saito discloses a display supported on the passenger conveyor structure to provide direction information to passengers, and concluded that it would have been obvious to modify Mehlert by utilizing a display supported on the passenger conveyor structure for this same purpose. (*Id.*, citing Saito, col. 2, ll. 32-68.)

Appellants contend that Mehlert teaches "[t]he location of the display separate[ly] from the conveyor permits the display to be positioned such that approaching passengers may view the information *prior to arriving* at the conveyor." (App. Br. 10, citing Mehlert, col. 1, ll. 61-64.) Appellants also contend that Mehlert expressly teaches away from the Examiner's combination, and the modification of Mehlert would interfere with the ability of the arrangement to achieve its intended result. (App. Br. 10.) These contentions are not persuasive.

Mehlert describes that "information displays have been added to conveyors in order to direct passengers to the appropriate conveyor. Such displays are mounted proximate to the conveyor and on the balustrade or frame." (Mehlert, col. 1, ll. 23-26.) As such, Mehlert discloses that it was known in the art to mount information displays on the conveyor itself. "A reference may be said to teach away when a person of ordinary skill, upon

reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994). Our reviewing court, however, cautioned against adopting this test in the abstract and approved, as evidence of obviousness, the use of a reference that described an embodiment as inferior but still usable. *Id.* Although Mehlert discloses exemplary embodiments that include a display separate from the passenger conveyer, it would have been obvious to modify Mehlert by utilizing a display supported on the passenger conveyor structure to provide a visible indication of information to passengers. Claim 28 only requires that "the display is supported on the [conveyor] structure." Mehlert discloses that a display can be mounted on "conveyor structure." Moreover, the modified conveyor in Mehlert would still be able to provide information to passengers of the escalator via the display. As such, Appellants' contention that this modification would render Mehlert unable to achieve its intended result is not persuasive. Hence, we sustain the rejection of claim 28.

CONCLUSIONS

1. The visible indications recited in claim 1 are directed to non-functional printed matter.
2. The visible indications recited in claim 1 are disclosed by Mehlert.
3. The Examiner did not err in concluding that the combination of Mehlert and Zaharia would have rendered obvious a device for use with a

passenger conveyor including "a transmitter remote from the display and wherein the transmitter provides a wirelessly communicated signal that controls the display," as recited in claim 9.

4. The Examiner did not err in concluding that the combination of Mehlert and Saito would have rendered obvious a device for use with a passenger conveyor in which "the display is supported on the [passenger conveyor] structure," as recited in claim 28.

DECISION

1. A. The rejection of claims 1, 2, 10, 11, 13-15, 20, and 29 as anticipated by Mehlert is AFFIRMED.

B. The rejection of claim 8 as anticipated by Mehlert is REVERSED.

2. The rejection of claims 3, 12, 16, and 22 as being unpatentable over Mehlert and Williams is AFFIRMED.

3. The rejection of claims 9, 21, 23-27, and 30 as being unpatentable over Mehlert and Zaharia is AFFIRMED.

4. The rejection of claim 28 as being unpatentable over Mehlert and Saito is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART

mls/nlk